

EXHIBIT 54

1

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK: TRIAL TERM PART 61

3 - - - - - X

4 PACIFIC ALLIANCE ASIA OPPORTUNITY FUND L.P.,

5 Plaintiff,

6 - against -

7 KWOK HO WAN, a/k/a KWOK HO a/k/a GWO WEN GUI
a/k/a GUO WENGUI a/k/a GUO WEN-GUI a/k/a
8 WAN GUE HAOYUN a/k/a MILES KWOK a/k/a HAOYUN GUO,
GENEVER HOLDINGS CORPORATION and GENEVER HOLDINGS LLC,

9 Defendants.

10 - - - - - X

11 Index No. 652077/2017

12 October 15, 2020

13 Teams Proceeding

14 B E F O R E: THE HONORABLE BARRY R. OSTRAGER, Justice

15 A P P E A R A N C E S:

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20 BY: STUART SARNOFF, ESQ.

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25 (Appearances continued on next page.)

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1 A P P E A R A N C E S: (Continuing)

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8 Terry-Ann Volberg, CSR, CRR
9 Official Court Reporter

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Proceedings

1 THE COURT: Good morning.

2 There are a few housekeeping matters that I want
3 to address before we discuss the application for a temporary
4 restraining order.

5 If you are not speaking, please mute your
6 microphone so we don't get static. Thank you.

7 So, as I started to say, there are a few
8 housekeeping matters I want to resolve before we address the
9 application for a temporary restraining order. We are
10 technically scheduled to discuss plaintiff's application for
11 attorney's fees, and there's in the motion part a motion by
12 the defendant to add an affirmative defense of failure to
13 mitigate damages. With respect to the latter issue,
14 Mr. Moss, I would like you to stipulate that at trial we
15 will conform the pleadings to the proof adduced at the
16 trial, and because I addressed the mitigation of damage
17 issue in my September 15th decision and order, and because
18 that issue has always been at least peripherally in the
19 case, I would like you to stipulate that that will be one of
20 the issues that will be addressed at the plenary trial, and
21 avoid the necessity of motion practice, and so I would like
22 to mark that motion as withdrawn without prejudice on
23 consent. Is that acceptable to you?

24 MR. MOSS: Your Honor, I just -- I just would like
25 to understand, my understanding was that the Court was going

Proceedings

1 to make a determination on damages. You had ordered us to
2 put our calculation in. I thought the mitigation issue had
3 already been decided by the Court on summary judgment, and
4 that there was not going to be a trial on damages, that this
5 was going to be done so that you could get the calculation
6 so that the Clerk of Court could issue the judgment. That's
7 what was in the order, and so I did not understand that
8 there was going to be a trial, and we do not believe that
9 there are any issues of fact for a trial.

10 THE COURT: My understanding is that I granted you
11 summary judgment on liability which is why you're privileged
12 to make the 5229 application that you're making today, and
13 we deferred the calculation of damages because there are
14 issues of fact relating to the quantum of damages. I found
15 that your proof was insufficient for me to grant summary
16 judgment on the issue of damages. So that's something
17 that's going to be addressed at the hearing which I believe
18 we scheduled for January.

19 MR. MOSS: So my understanding, your Honor, was
20 that the January trial was on the veil piercing issues --

21 THE COURT: It is, it is.

22 MR. MOSS: -- and that the only defense on damages
23 that Mr. Kwok has proffered, your Honor, is mitigation.
24 Mitigation was something that the Court has already rejected
25 as a matter of Hong Kong law on summary judgment.

Proceedings

1 THE COURT: I specifically referenced it in the
2 September 15th decision. Now I referenced it in a manner
3 suggesting that I thought it was a dubious claim, and I
4 still think it's a dubious claim because I don't think it
5 was incumbent upon your client post facto to purchase an
6 apartment from the Communist Chinese Party at what would
7 appear to be an above-market price, and that's what I said
8 in my September 15, 2020, decision.

9 So there's a motion by the defendant to amend his
10 answer to assert a defense of failure to mitigate damages.
11 Whenever we get around to assessing damages, I'm going to
12 hear the defendant on the mitigation issue. Now if you want
13 him to make a motion, and you want me to decide the motion,
14 there is nothing I can do other than allow him to make the
15 motion, have you respond to the motion, and then decide the
16 motion. And since any hearing that we have is one at which
17 I'm going to conform the pleadings to the proof that's
18 adduced at trial, I thought as a housekeeping matter we'd
19 have the defendant withdraw that motion without prejudice
20 and for you to be content with that state of play.

21 MR. MOSS: Okay, that's fine. If your Honor is
22 going to grant the motion anyway on the motion for leave to
23 amend, we can stipulate to that.

24 We have a pending motion for damages, and they --

25 THE COURT: Yes.

Proceedings

1 MR. MOSS: So how would your Honor like to resolve
2 the damages issue?

3 THE COURT: We are going to have a hearing on the
4 damages issue and that hearing is not today.

5 MR. MOSS: Yes.

6 THE COURT: So at that hearing whatever the
7 defendant wants to proffer in connection with this
8 mitigation of damage theory which I strongly indicated in my
9 September 15, 2020, decision and order is quite dubious,
10 they will be permitted to adduce whatever evidence they
11 have, if any, on that theory in connection with the damages
12 hearing.

13 Let me ask counsel for the defendant if we can
14 mark the motion to amend the answer as withdrawn without
15 prejudice in light of what is now on the transcript of
16 proceedings of today?

17 MR. SIEGAL: Yes, John Siegal, Baker Hostetler,
18 for defendant Kwok.

19 We certainly consent to that result, and will
20 serve our Second Amended Answer following today and file it
21 so it's of record and that's the basis on which we will
22 proceed to the hearing.

23 THE COURT: Fair enough. It's really not
24 necessary for you to file a Second Amended Complaint, but I
25 think it's very clear on the transcript of the proceedings

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1 of today that we are going to have a damages hearing, and at
2 the damages hearing you will be able to adduce whatever
3 testimony you wish or whatever documents you wish to
4 introduce on the mitigation portion claim, and it's really
5 just burdensome to the Court and burdensome to the plaintiff
6 for you to file a Second Amended Complaint and for the
7 plaintiff to have to respond to it.

8 So the record speaks for itself. I would just
9 like a little cooperation from you and Mr. Moss here.

10 MR. SIEGAL: Yes, your Honor. We appreciate the
11 Court allowing us the opportunity to adduce evidence on that
12 issue, and we will be ready at the hearing, and we have had
13 good cooperation with Mr. Moss since we have appeared in the
14 case, and I'm sure we will continue to, and we look forward
15 to that opportunity to try to convince your Honor, who we
16 understand it's dubious, that on full examination there's a
17 mitigation defense here that has a very substantial impact
18 on the damages, so thank you.

19 THE COURT: All right.

20 We will not have any Second Amended Complaint, and
21 we are not going to have any motions, correct?

22 MR. SIEGAL: Yes, your Honor, understood.

23 THE COURT: All right.

Now the second housekeeping matter that we have is attorney's fees. Since there are going to be further

Proceedings

1 proceedings, it doesn't make any sense to address attorney's
2 fees today because there will be more attorney's fees in
3 connection with the two hearings that we are going to have,
4 one on damages and the other that's been previously
5 scheduled for January 15th.

6 So with your consent, Mr. Moss, I would like to
7 adjourn your application for attorney's fees to a more
8 appropriate time.

9 MR. MOSS: That's fine. That's fine, your Honor.

10 I guess, you know, the attorney's fees are
11 contract damages just like the principal and interest, and I
12 would propose that we submit our evidence at the hearing or
13 concurrently with the hearing. I guess we really wouldn't
14 have any witnesses on the attorney's fees other than Mr.
15 Lewis. I think we should do it at the hearing, your Honor,
16 that would make the most sense to me, at the damages
17 hearing, because they are really part of the damages.

18 THE COURT: When all proceedings in this case are
19 concluded you will be awarded whatever contractually
20 entitled attorney's fees are due you. It's just not a today
21 issue, it's an issue that awaits future resolution. All
22 right.

23 MR. MOSS: Yes, your Honor.

24 And do we have -- do you have a sense of when you
25 would like to conduct the hearing on damages?

Proceedings

1 THE COURT: As soon as I can.

2 Not for anything, you're all aware of the fact
3 that Justice Scarpulla has been elevated to the Appellate
4 Division, Justices Friedman and Sherwood are retiring in the
5 near term, so there are only five Commercial Division judges
6 who are currently in the wheel, and Justice Scarpulla's
7 cases have been reallocated to the five justices who remain
8 in the wheel. So we are all a little busy now.

9 MR. MOSS: Yes, your Honor.

10 THE COURT: You have a January 15th date on your
11 other issue. We will try and find a convenient time to
12 resolve damages and attorney's fees.

13 So now let's get to the only thing that I want to
14 deal with this morning which is your application under CPLR
15 5229 for a restraining order that extends to Mr. Kwok's
16 assets, and which you believe should be extended to entities
17 that he controls whether they be single purpose LLCs or
18 family members like his son.

19 So I will hear you, Mr. Moss.

20 MR. MOSS: Thank you.

21 Your Honor, as far as the relief goes under 5229,
22 I don't think Mr. Kwok disputes that we are entitled to some
23 relief. He does not contest that Pacific Alliance meets the
24 standard. He does not dispute our contention that he
25 intends to dissipate his assets, a process that has already

Proceedings

1 begun with this sham bankruptcy proceeding.

2 The Court has suggested that there's a showing
3 necessary beyond the fact of just prevailing on the
4 judgment. We have submitted that all you need to do is
5 prevail on summary judgment. The Court suggested that there
6 might be a an additional showing necessary so we did set
7 that forth in our papers.

8 There's a clear and significant risk here that if
9 left unchecked Mr. Kwok will continue to do everything in
10 his power to shield assets and render this judgment
11 uncollectible whether it's committing perjury, whether it's
12 disobeying Court orders or whether it's making this sham
13 bankruptcy petition. We have been saying this judge for
14 years. It's why we requested the attachment. We also knew
15 what was going to happen. We would win because Mr. Kwok had
16 no legitimate defense, and then Mr. Kwok would evade the
17 judgment, and that he would do whatever he can do to ensure
18 that my client is left holding the bag.

19 So the two issues specifically before the judge on
20 the 5229, there are two arguments that Mr. Kwok makes to
21 sort of limit the relief that we are requesting. So I will
22 deal with it, what I think is the easier one first.

23 First, Mr. Kwok does not dispute that we are
24 entitled to depose him and to discovery into him, but he
25 argues that the discovery should only be into assets that we

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Proceedings

1 have not sought discovery for, that we have not gotten
2 discovery for. The only asset related to discovery in this
3 case was during the attachment phase, and Mr. Kwok and his
4 prior counsel vehemently and consistently refused to provide
5 any discovery into any assets other than the
6 Sherry-Netherland residence. I think we are all in
7 agreement, actually, that all of the other assets are fair
8 game.

9 As for the apartment, the residence, there's no
10 reason to limit the discovery on that. This is the only
11 asset we have identified that Mr. Kwok has in New York. It
12 seems to be the largest asset that he has in this country,
13 and it's perhaps the largest asset he has anywhere that has
14 not been frozen by the Chinese government.

15 Now, Mr. Kwok's prior counsel denigrated us, they
16 said we were hysterical, we were afraid of the merits
17 because we kept seeking to attach the apartment. We knew
18 who we were dealing with and we knew we would end up here,
19 that this asset was our best chance to collect.

20 We are entitled to discovery into that asset.
21 There's no appreciable burden associated with this
22 discovery, and we have not taken any discovery on the
23 apartment for two years.

24 There are new arguments, there are new things to
25 discover. For example, Mr. Kwok is now claiming in his

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Proceedings

1 bankruptcy petition that there's another company, not just
2 the New York company owned by the BVI company, the two
3 Genever entities, there's a new company, a new shell company
4 called Bravo Luck, and that's really the beneficial owner of
5 the apartment, and that has been paying the expenses, and
6 that is owned wholly by his son. So his argument in the
7 bankruptcy is not that he has any legitimate creditors, it's
8 that the apartment is held in trust for his son, and his son
9 should take priority over Pacific Alliance.

10 It's all a shell game. We are entitled to explore
11 that and whatever else had is happening in the last few
12 years. They put the apartment on the market, and then they
13 took it off the day of the attachment proceeding so that
14 they could argue to you in court, hey, it's not on the
15 market any more, you shouldn't attach it. We are entitled
16 to that discovery, and that's what CPLR 5229 is intended to
17 give us, giving the judgment creditor precisely the
18 information of who owns the assets, where they are located.

19 The second issue that they raise, your Honor, and
20 that's the one that you started this conversation with, is
21 what should be the scope here, should the restraining order
22 relate only to Mr. Kwok's assets, to Mr. Kwok's assets that
23 he indirectly and directly owns? What they are trying to
24 say here is that it should only pertain to assets he "owns
25 directly." That is an exception that would swallow the rule

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Proceedings

1 because Mr. Kwok does not hold any assets directly. That is
2 his MO. He holds assets through multiple layers of family
3 members, multiple layers of shell companies precisely for
4 this reason so creditors like us can't reach them.

5 Mr. Kwok admitted it in his deposition in another
6 case. He said, he testified under oath, we quote this, "In
7 reality I don't have any assets under the law. I'm
8 penniless." He makes those claims because of the way he
9 structures his holdings like the apartment. I told you, for
10 example, shell company, shell company that he now says his
11 son owns, and this is a company, Bravo Luck, that he says
12 his son owns even though he used to hold it, 50 percent of
13 it, and apparently says now he sold it to his son for a
14 dollar based on documents he didn't produce in this case,
15 backdated, forged documents.

16 This entire thing is a sham, that his 20-something
17 year old son at the time was really the one to pay
18 \$70 million for the apartment, he's the rightful owner of
19 the apartment? It's all a game to make sure we are unable
20 to collect.

21 There's also a 30 million-dollar yacht. That one
22 is held by a Hong Kong company.

23 THE COURT: I thought it was \$27 million.

24 MR. MOSS: I'm sorry, I was rounding up. I was
25 rounding up.

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Proceedings

1 There's a 27 million-dollar yacht held by a Hong
2 Kong company, and once we are allowed to take discovery we
3 will find more assets held by more shell companies of which
4 Mr. Kwok or one of his children is the sole owner.

5 Here's the issues: If they ask you to only enjoin
6 him from dissipating his assets that he holds directly, that
7 would exclude everything, and it would exclude everything
8 even though Mr. Kwok has said that these are his assets.

9 He submitted an affidavit to this Court saying he
10 owned the apartment. He submitted, he filed a complaint
11 last month in New York saying that the yacht was "his
12 yacht." These are his assets, and it's permitted by the
13 statute, CPLR 5229, to have a restraining order that applies
14 to assets held directly and indirectly.

15 CPLR 5229 provides that a plaintiff can have
16 prejudgment restraint in the same way it can have
17 post-judgment restraint. Post-judgment restraint is
18 governed by CPLR 5222, and that says that the restraints
19 apply to property in which he or she, meaning the judgment
20 debtor, "has an interest." It doesn't say direct interest,
21 it says an interest. Mr. Kwok has already testified, he's
22 already submitted evidence in this case that he owns the
23 apartment, and he has judicial admissions that he owns the
24 yacht.

25 So their cases that they cite for the proposition

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Proceedings

1 that CPLR 5229 and 5222 only apply to direct assets are
2 completely inapposite because none of them involve a
3 situation whereas here the defendant has actually claimed
4 that he owns these assets.

5 THE COURT: Mr. Moss, I understand your argument.

6 Let me hear from Mr. Siegal.

7 MR. MOSS: Thank you, your Honor.

8 MS. CARVALHO: Good morning. Melissa Carvalho
9 from Baker & Hostetler for Mr. Kwok.

10 I just want to begin by saying we have repeatedly
11 heard this morning Mr. Moss saying "Mr. Kwok's bankruptcy."
12 The bankruptcy petition that was filed was not Mr. Kwok's.
13 We have been made aware of it as the Court has been made
14 aware of it. On its face it says that it's filed by an
15 entity, one of the entities who has counsel here present
16 today. So if any questions or issues are arising relating
17 to the bankruptcy, I cannot speak to it, but Mr. Mitchell
18 certainly can.

19 So on CPLR 5229 the relief being sought by
20 plaintiff in the TRO and order to show cause is far broader
21 than that provided under CPLR 5229. Plaintiff seeks to
22 enjoin and restrain defendant Kwok with respect to "any
23 property in which he has an interest," but CPLR 5229's
24 application is limited to Mr. Kwok, the adverse party.

25 CPLR 5229 specifically states that "the trial

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Proceedings

1 judge may order examination of the adverse party and order
2 him restrained with the same effect as if a restraining
3 notice had been served upon him after judgment." Courts
4 have strictly construed the language of CPLR 5229. The
5 adverse party is Mr. Kwok, and the Court's decision and
6 order on summary judgment is limited to him individually.

7 Plaintiffs have spent a lot of time in their reply
8 seeking to continue to poison the well against Mr. Kwok, but
9 that is simply because plaintiff cannot present authority to
10 support its unilateral expansion of CPLR 5229.

11 Plaintiff presented the Court with various
12 categories of cases where CPLR 5229 relief has been granted,
13 but that goes to the Court's discretion to grant this
14 relief. The statute says the Court "may order relief under
15 5229," and we are not disputing that. Yes, a Court can
16 award CPLR 5229 relief in many different fact patterns, but
17 the relief is still limited to what is provided in CPLR
18 5229, and plaintiff has not shown any basis supporting its
19 unilateral expansion of the statute besides it's just what
20 they want.

21 The cases cited by plaintiff, in fact, do not
22 expand the scope of CPLR 5229. The APF case, Gallegos case,
23 Safeco case, Unex case and Leser case all limit the relief
24 to the specific adverse party and not to any "interest" that
25 party may have. In the Eastern District of New York in the

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Proceedings

1 Leser v. U.S. Bank case the Court specifically stated,
2 "Plaintiff is correct, however, that the scope of the order
3 should be limited to the restraint on the assets of
4 plaintiff Leser." USB had originally sought restraints
5 against "plaintiff Leser and any person, company or other
6 entity controlled by him," but then USB conceded during
7 argument that it was only seeking restraint as to plaintiff
8 Leser, and the Court found that appropriate and proper.
9 Nothing plaintiff says can change that. The statute only
10 provides the relief that it provides. So let's look at the
11 statute.

12 The statute provides for examination and
13 restraints. Examination: Here Mr. Kwok's assets have
14 already been addressed in discovery. Mr. Kwok has been
15 deposed three times in this matter, on October 3rd, 2018,
16 November 25, 2019, and December 11, 2019. Mr. Kwok has
17 produced over 14 pages of documents. Plaintiff has had
18 multiple opportunities to sufficiently examine Mr. Kwok,
19 and, in fact, if you look at plaintiff's second set of
20 document requests attached to my affirmation you see that
21 they were, in fact, targeting assets.

22 Now plaintiff argues that passed discovery is
23 insufficient, but the record shows that there was, in fact,
24 disclosure. Objections were certainly made based on the
25 scope. There were questions asked of Mr. Kwok such as,

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Proceedings

1 " Were any of your assets received by the Chinese
2 government," but by not allowing fishing expeditions that
3 does not mean that discovery was not sufficient.

4 I also note there were disputes in the past, and
5 those discovery disputes have been resolved, but creating
6 confusion by making these broad-sweeping statements, and
7 attaching e-mails without original letters that they are
8 responding to does not change that.

9 Now turning to the second part that the statute
10 allows restraint, but restraint is limited to CPLR 5229 and
11 is distinguishable from the restraint provided under CPLR
12 5222. The relief sought here pursuant to 5229 is applicable
13 before a judgment has been entered so unlike post-judgment
14 devices which are available against third-parties, the
15 restraining powers under CPLR 5229 can only be used against
16 "the adverse party." However, at any posture restraint is
17 always limited to property in which Mr. Kwok has a direct
18 and actual interest. Restraint will not apply to indirect
19 interests including interest held in a corporation, proceeds
20 of property, or even assets of an alter ego until alter ego
21 status has been adjudicated and liability has been
22 determined.

23 Plaintiff also cannot use CPLR 5229 as an end run
24 under the requirements for prejudgment attachment statutes.
25 Here plaintiff's application relies ad nauseam and we have

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Proceedings

1 heard his counsel repeat this morning and admit that the
2 sole focus here is on the ownership of the residence at the
3 Sherry. Plaintiff himself says Mr. Kwok is not the owner of
4 the Sherry. The Court has acknowledged and stated Mr. Kwok
5 is not the owner of the Sherry. And even though Mr. Kwok
6 does not have a direct interest in the residence at the
7 Sherry, he agreed on consent to a court order where he would
8 provide plaintiff with immediate written notice of any
9 contract to sell, assign, pledge or transfer any assets of
10 the respective defendant entity to any third-party. So
11 plaintiff has received broader relief on subsequent than it
12 would have been entitled on this instant publication under
13 CPLR 5229 so, therefore, there's no concern with respect to
14 dissipation of the Sherry.

15 Now plaintiff argues that Mr. Kwok is trying to
16 weaken the relief that they are seeking, but in actuality we
17 are adhering to the statute and the powers that the Court
18 has given under the statute. Plaintiff is relying on
19 statements allegedly made by Mr. Kwok regarding his
20 ownership of assets. Mr. Kwok can say anything he wants to,
21 ownership is a factual legal issue. If he does not own it,
22 he does not own it, period. That is not enough to give you
23 broader relief under CPLR 5229.

24 Discovery has been conducted. The plaintiff's
25 focus here is solely on the Sherry, as we have repeatedly

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Proceedings

1 heard this morning. Any further examination is a waste of
2 time and money. The subject is already -- the Sherry is
3 already subject to an order and it's restrained.

4 None of plaintiff's arguments change the
5 application of CPLR 5229 here. That's it.

6 Now importantly relief under 5229 rests within the
7 sound discretion of the Court, absolutely, but Mr. Kwok has
8 already been examined, and any further examination should be
9 limited to assets and topics not previously addressed in
10 discovery. Redundant and duplicative discovery are not
11 authorized under CPLR 5229.

12 And the transfer of the Sherry, as we have already
13 mentioned several times, it's already been restricted, and
14 any further restraints should be denied. We have a consent
15 order in place that Mr. Kwok has agreed to, and Mr. Kwok
16 does not have a direct interest in the residence at the
17 Sherry.

18 So Mr. Kwok requests that this Court vacate the
19 TRO, deny plaintiff's motion for CPLR 5229 relief as it far
20 exceeds the scope of CPLR 5229. Mr. Kwok has already been
21 examined, and his assets have already been discovered and
22 restrained by this Court, but should this Court be inclined
23 to grant plaintiff's relief under CPLR 5229, Mr. Kwok would
24 request that this Court use its discretion to modify such
25 relief to Mr. Kwok's assets in his individual capacity as

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Proceedings

1 the "adverse party," and Mr. Kwok's assets not previously
2 the subject of prior discovery and court orders relating to
3 a transfer.

4 Thank you, your Honor.

5 THE COURT: Okay. Does anybody from Genever want
6 to say anything?

7 MR. MITCHELL: No, your Honor. I think that was
8 well said. I join Ms. Carvalho in her argument.

9 THE COURT: All right.

10 Look, this is a 2017 case. We've had multiple
11 motions relating to Mr. Kwok's assets. The Court believes,
12 as reflected in the September 15, 2020, order that Mr. Kwok
13 has attempted to mislead the Court. The Court believes that
14 Mr. Kwok is, as the plaintiff contends, playing a shell game
15 with his assets, and has violated if not the letter of court
16 orders, the spirit of court orders. This is going to come
17 to an end on or shortly after January 15, 2021, when we have
18 the trial on the alter ego issue, but between now and the
19 commencement of the January 15, 2021, trial Mr. Kwok and any
20 entities that he directly or indirectly controls are
21 restrained from alienating or transferring any property that
22 Mr. Kwok has a direct or indirect interest including most
23 specifically the apartment at the Sherry-Netherland Hotel
24 which was the subject of 2018 discovery and a consent order
25 to which counsel for Mr. Kwok referenced, and also the yacht

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Proceedings

1 which Mr. Kwok has at various times claimed ownership of.
2 So the net result is that I exercise my discretion under
3 CPLR 5229 to restrain any further transfers of the
4 Sherry-Netherland apartment which Mr. Kwok once owned, and
5 the 27 million-dollar yacht which Mr. Kwok once claimed to
6 have owned.

7 So we are not going to have any more shell games.
8 Wherever these assets are held, they are going to remain
9 held where they presently reside, and if it's determined
10 that the entities that are presently listed as the owners of
11 the assets are the alter ego of Mr. Kwok or are wholly
12 dominated and controlled by Mr. Kwok, those assets will be
13 made available to satisfy any judgment that the plaintiff
14 recovers.

15 In the interim, between now and the January 15,
16 2021 trial on the alter ego issues, the plaintiff can
17 conduct discovery of any of the entities that claim to own
18 the Sherry-Netherland apartment or the yacht, and counsel
19 for Genever and counsel for Mr. Kwok are directed to
20 forthwith provide counsel for the plaintiff with information
21 identifying the record owners of those two assets.

22 That's the order of the Court.

23 MS. CARVALHO: Your Honor, could I ask for some
24 clarification?

25 We understand the order of the Court today,

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Proceedings

1 however, I am confused where it comes to indirect ownership
2 because, I'm just thinking off the top of my head here,
3 there could be entities that will be restrained from
4 conducting regular and ordinary business, and to what extent
5 can someone decide that something would be an indirect
6 interest and prevent ordinary transfers? I mean, I don't
7 know how far this goes with other independent autonomous
8 companies.

9 THE COURT: It goes this far: There is no
10 ordinary course transfer of a 70 million-dollar apartment at
11 the Sherry-Netherland. There is no ordinary course transfer
12 of a 27 million-dollar yacht. If Mr. Kwok wants to get a
13 haircut or if Mr. Kwok wants to buy a newspaper or if
14 Mr. Kwok wants to take a vacation in the middle of the
15 coronavirus pandemic, that would be ordinary course, but I
16 think everybody on this Microsoft Teams platform understands
17 that there's been a lot of moving around of these two assets
18 that have an aggregate value of at least \$75 million, and
19 the plaintiff is entitled to ascertain the entity that
20 presently has title to these assets, how those entities came
21 to have title to those assets, and any intermediate
22 transfers that were made between the time Mr. Kwok was the
23 record owner of these assets and the time that the present
24 record owner came into possession of these assets.

25 MS. CARVALHO: Understood.

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Proceedings

1 So the assets specifically are the Sherry and the
2 yacht, but the position, just to make sure I understand it,
3 is that with respect to other autonomous corporations, they
4 can continue in the ordinary course, there's no ceasing or
5 stopping of business for other legally autonomous entities.

6 THE COURT: It's not clear to me what other
7 business and what other entities Mr. Kwok has formed. The
8 intent here which is very clear and specific is that in this
9 2017 case in which there's been a great deal of
10 gamesmanship, a great deal of dissembling, and some flagrant
11 disregard of court orders, I want to know if any transaction
12 is going to take place in which Mr. Kwok is the guiding hand
13 that's something other than an ordinary course of business
14 transaction.

15 MS. CARVALHO: Okay. I think we understand.

16 Thank you, your Honor.

17 MR. MOSS: Your Honor, if I may, just two points.
18 Number one, in terms of the assets, we know that
19 there are also shell companies in Connecticut that own
20 Greenwich real estate that he just bought for like
21 \$7 million. I think the most efficient -- and we don't know
22 what we don't know. I think the most efficient way to
23 proceed would be for us to be able to serve some sort of
24 interrogatory at the outset, what are the assets and what
25 are the entities that hold them, and then we can proceed to

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Proceedings

1 depose Mr. Kwok and those entities if they are entities or
2 Mr. Kwok as the 30(b) (6) for those entities. I want to do
3 this efficiently and with minimal burden, and rather than
4 just asking him questions that he is going to say he does
5 not know the answer to, I think the most efficient way would
6 be to try to use written discovery to get a list of what the
7 actual assets are.

8 THE COURT: Look, I'm not going to tell you how to
9 practice law. You have the transcript of today's
10 proceedings. I think I've made it very clear what you can
11 do.

12 You can conduct discovery of any assets -- you can
13 conduct discovery of any entity that you have a good faith
14 basis for believing Mr. Kwok directly or indirectly
15 controls. It can be written discovery, it can be oral
16 discovery. I'm not going to play schoolyard monitor while
17 you jockey back and forth with discovery disputes about the
18 scope of what you can do. I think Mr. Kwok's counsel and I
19 think Genever's counsel full understand what is reflected in
20 the transcript of proceedings. We are dealing with a
21 telescoped period of time here.

22 There's a restraining order that's been entered
23 with respect to two specific assets, and only two specific
24 assets, and there's an alter ego trial that's scheduled for
25 January 15, 2021, and there's a damages hearing that's going

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Proceedings

1 to take place sometime before or in conjunction with the
2 alter ego trial.

3 Again, this is a 2017 case, and it's occupied a
4 considerable amount of the Court's time. It's resulted in
5 several written decisions. While orders of the Court are
6 either flaunted or exceedingly liberally interpreted, and
7 while intentional or unintentional misstatements that have
8 misled the Court have been made to the Court, we are going
9 to have closure in this case in January of 2021.

10 So the court reporter will give you her e-mail
11 address. You will order a copy of the transcript. I can't
12 be any clearer than I've been on this transcript.

13 If any party or any counsel disregards the orders
14 of the Court, there will be serious sanctions.

15 Are we all clear?

16 MR. MOSS: Yes.

17 Your Honor, may I just -- one question on the
18 damages motion.

19 We filed our motion, they opposed. I understand
20 the Court is going to have a hearing as soon as possible on
21 this issue. May we reply because there are some things we
22 would like to put before the Court given that they have
23 opposed and we have not yet replied?

24 THE COURT: If you wish. I have explained to you
25 that I am backed up with trials and motions. I have carved

Proceedings

1 out a January 15th date. That's chiseled in stone. We will
2 have the alter ego trial on January 15, 2021, if we can get
3 to the damages hearing before, then we will, but there's not
4 a lot of time between now and January 15th, and you,
5 Mr. Moss, are probably going to be quite busy.

6 MR. MOSS: Yes, your Honor.

7 MR. MITCHELL: Your Honor, one last question
8 regarding the order here today just because, as you're
9 aware, Genever New York has filed bankruptcy. I doubt that
10 any assets within the bankruptcy estate would be sold or
11 anything between now and January 15th, but I want to make
12 sure that myself particularly or any party to the action
13 wouldn't draw the ire of a potential sanction for whatever
14 happens in the bankruptcy court.

15 THE COURT: No, I cannot -- I have no jurisdiction
16 over any entity that's in bankruptcy. That doesn't mean
17 applications can't be made by Mr. Moss to the bankruptcy
18 court. It doesn't mean that Mr. Moss can't refer in any
19 proceedings before the bankruptcy court to the transcript of
20 the proceedings here today, but I well understand the
21 automatic stay of the bankruptcy court with respect to
22 entities that have filed for bankruptcy.

23 MR. MITCHELL: Thank you, your Honor.

24 THE COURT: All right.

25 Terry, can you give the parties your e-mail

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Proceedings

1 address from which they can order a copy of the transcript
2 which will be so ordered and e-filed?

3 Thank you very much.

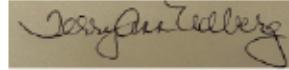
4 Have a nice day everyone.

5 MR. MOSS: Thank you, your Honor.

6 ***

7 C E R T I F I C A T E

8 I, Terry-Ann Volberg, C.S.R., an official court reporter of
9 the State of New York, do hereby certify that the foregoing
10 is a true and accurate transcript of my stenographic notes.



11
12 Terry-Ann Volberg, CSR, CRR
13 Official Court Reporter

14 SO-ORDERED 11-9-2020



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16 BARRY R. OSTRAGER, J.S.C.

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